

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:09-CR-216-FL

UNITED STATES OF AMERICA,)	
)	
v.)	
)	
HYSEN SHERIFI)	UNITED STATES' BRIEF
ANES SUBASIC)	REGARDING AUDIO
ZAKARIYA BOYD, a/k/a/ "Zak;")	ENHANCEMENT
DYLAN BOYD, a/k/a "Mohammed;")	D.E. 1106 ¶ 3
MOHAMMAD OMAR ALY HASSAN;)	
and)	
ZIYAD YAGHI,)	
Defendants.)	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby files this brief in regard to the Court's inquiry concerning audio enhancement.

The United States believes that due to its quantity, it will be impracticable to enhance the audio recordings for playback at trial. However, there are two possible technological solutions for the concerns regarding the quality of the audio evidence.

First, most parties involved in the transcription process of the entire quantity of audio recordings were using noise-reducing headphones during the transcriptions. While there is variability in quality, the extremely poor quality evidenced in the courtroom in the June 7, 2011, hearing surprised those who had listened and transcribed the audio. The same recordings, when listened to through the noise reducing headphones, are much more clear. The

government believes that noise-reducing headphones for each member of the jury, the court, and the parties, is one possible solution to the concern.

While the government could find no controlling authority, the Sixth Circuit has approved the use of individual juror headphones as an appropriate exercise of discretion under Fed. R. Evid. 611. U.S. v. Talley, 164 F.3d 989 (6th Cir. 1999). The following cases implicitly approve the use of headphones: United States v. Plummer, 1999 W.L. 254167 (4th Cir. 1999) (unpubl'd); U.S. v. Lnu, 575 F.3d 298 (3rd Cir. 2009); Estrada v. U.S., 2011 WL 2457555, (D.CT 2011) (slip copy); U.S. v. Massino, 356 F.Supp.2d 227 (E.D.NY 2005); and U.S. v. Gaitan-Ayala, 2009 WL 948342 (D.HI 2009) (unpubl'd). To the extent there may be concerns of individual equipment failure or difficulty confirming all jurors have the same level of audibility, the government believes clear instruction by the Court, before the jurors don the headphones, to raise their hand if any issues arise should resolve such concerns.

Second, the courtroom technician for the United States has many years experience in courtroom presentations. The technician believes that use of a high quality amplifier, already in possession of the government, would significantly increase the quality over that heard at the June 7, 2011 hearing. She bases this belief on the prior use of the same proposed amplifier system in the United States District Court in Elizabeth City. The

technician had an appointment and traveled to New Bern July 18, 2011, to test the system; unfortunately, not all tests could be undertaken that day. A second appointment for testing has been scheduled for July 27, 2011. The use of such amplifier, with the existing assisted listening devices, may be sufficient in and of itself to rectify the concerns of the audio quality, but the government requests that it be permitted to conduct the test and report back.

The government proposes the use of an amplifier already in possession of the government and the existing assisted listening devices if found to be sufficient. Should amplification be insufficient, then the government requests permission to use individual noise-reducing headphones. The government and its agencies own a number of these sets already and will supplement as necessary.

Respectfully submitted this 22nd day of July, 2011.

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CERTIFICATE OF SERVICE

This is to certify that I have this 22nd day of July, 2011, served a copy of the foregoing upon counsel for the defendants in this action by electronically filing the foregoing with the Clerk of Court, using the CM/ECF:

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and further, upon defendant Anes Subasic by placing a copy postage pre-paid in first class mail addressed to: Anes Subasic, Public Safety Center, Attn: Wake County Jail, Post Office 2419, Raleigh, NC 27602.

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